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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,305	04/24/2000	Artur G. Zimmer	84399	7171

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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/556,305

Applicant(s)

Zimmer

Examiner

George Young

Group Art Unit

1761

mk-5

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 17-31 ☒ are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 17-31 ☒ are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

### DETAILED ACTION

The specification is objected to because of the following informalities:

1. It lacks a brief description for Figure 10 as required by 37 CFR 1.74.
2. It fails to identify reference numeral 83 as shown in Figure 10.

Claims 17-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reasons:

1. Claims 17 and 24 fail to clearly and distinctly point out that the partition wall is in the form of an open ended tube for defining a treatment chamber.
2. Claims 17 and 24 also fail to clearly and distinctly point out that a space is provided between an interior wall of the pressure vessel (10) and an outer surface of the partition wall (30). See page 6, lines 24-26 of the specification and see Figure 1.
3. There is no antecedent basis for "the interior wall" recited in claims 17 and 24, lines 12 and 15, respectively.
4. While the preamble of claim 24 calls for a method of producing a powdered milk product from fresh milk, claim 24 fails to recite a positive manipulative step of producing a powdered milk product from fresh milk. Thus claim 24 is indefinite and incomplete. An amendment to claim 24, last line, after "dryer" inserting – to produce a powdered milk product – would obviate this rejection.

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5. The term "a fluent food product" recited in claim 24, line 6, and the term "the food product" recited in claim 24, line 7 should be changed to read -- a fresh milk -- and -- the fresh milk -- in order to be consistent with "fresh milk" throughout the claim.

6. The misspelling of "in" in claim 19, line 1 should be corrected.

7. The term "using" recited in claims 22 and 23 is improper since it does not further impart positive manipulation to the method claim. An amendment to claim 22, changing "including the step of using steam as the heating medium" to -- wherein the heating medium is steam --, and an amendment to claim 23, changing "including the step of using milk as the fluent food product" to -- wherein the fluent food product is milk -- would obviate this rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Barberan or Uchi et al. Each of the alternative references shows the product set forth in claims 28-31. Alternatively, it is not seen that the claims define unobvious new product over the product of Barberan or Uchi et al. The Examiner's position is that irrespective of the process by which the product is made, the claimed product is still a heat-treated, sterilized, powdered milk product; and such a product is shown by Barberan or Uchi et al. It is well settled that the recitation that the product is made by a new process, if the process was indeed new and patentable, does not impart patentability to an otherwise unpatentable product. The burden is upon the applicant to come forward with evidence to prove that the prior art product does not necessarily or inherently possess the characteristics of the claimed product. See In re Brown, 173 USPQ 685; In re Pilkington, 162 USPQ 145; In re Fessman, 180 USPQ 324 (especially 325, last para.); In re Marosi, 710 F.2d 799, 218 USPQ 195 (Fed. Cir. 1983); and In re Thorpe, 227 USPQ 964 (Fed. Cir. 1985).

Claims 28-31 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Engel et al.

Engel et al show the product set forth in claims 28-31. Alternatively, it is not seen that the claims define unobvious new product over the product of Engel et al. The Examiner's position is that irrespective of the process by which the product is made, the claimed product is still a heat-treated, sterilized, powdered milk product; and such a product is shown by Engel et al. It is well settled that the recitation that the product is made by a new process, if the process was indeed new and patentable, does not impart

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patentability to an otherwise unpatentable product. The burden is upon the applicant to come forward with evidence to prove that the prior art product does not necessarily or inherently possess the characteristics of the claimed product. See In re Brown, In re Pilkington, In re Fessman, In re Marosi, and In re Thorpe supra.

Claims 17-27 are free of the prior art.

Claims 17-27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Yeung whose telephone number is (703) 308-3848. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

G. C. Yeung/mn  
March 4, 2003

GEORGE C. YEUNG  
PRIMARY EXAMINER